SUPREME COURT OF THE UNITED STATES.

No. 273.

THE UNITED STATES, APPELLANTS,

vs.

FRANCIS R. TILLOU ET AL., EXECUTORS OF HENRY ECKFORD, DECEASED.

APPEAL FROM THE COURT OF CLAIMS.

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1 To the Court of Claims of the United States.

The petition of the surviving executors of the last will and testament of Henry Eckford, of the city of New York, deceased, respectfully showeth:

Upon information and belief, as follows, that is to say: That during the pendency of the last war between the United States and Great Britain, the said Henry Eckford entered into large and heavy contracts with the government of the said United States to construct, on the shore of Lake Ontario, various vessels-of-war; and to accomplish his undertaking was obliged, at great cost and disadvantage, to engage artisans and mechanics and materials from the Atlantic seaboard, and to have them conveyed to the lake shore. That during most of the time of the war he was actively engaged in performing these contracts, and did, against extreme difficulties, dangers, and obstructions, perform them to the satisfaction of the government.

That he not only did all things required of him to be performed within the limits of his contracts, but in all other matters within his ability co-operated with the officers then there in command to further the operations of the army and navy of the United States in that section of the country.

That among these transactions were the purchases of one piece of land at Sackett's Harbor, in the county of Jefferson, and State
2 of New York, called "Navy Point;" and of another piece of land at the same place, called "The Hospital Ground;" also, the building of a dock at Navy Point, and the purchase of a tract of about three hundred acres of land at Storr's Harbor, in the same county, all of said lands bounding on the waters of Lake Ontario.

That it being then a time of war, and the struggle there in that region very severe, there was not the ability of observing much ceremony in these transactions; prompt, energetic, bold, skillful, and wise efforts were in constant requisition; the harbor itself was once vigorously attacked, by both a land and naval force of the enemy, who were using their utmost exertions to increase and render superior their naval force on that lake. The moment did not admit of hesitation or delay; energetic action was demanded, was given; and the measures, then indispensable, were in good faith adopted.

That the land at Navy Point, and the Hospital Ground, and the said land at Storr's Harbor also, as is said, were originally purchased by Commodore Chauncey, and charged by him in his accounts to the government, but the auditing officer at Washington struck out the charge on the ground that it required a law to authorize the purchase. That thereupon Mr. Eckford purchased the property at cost from him, and erected the dock above mentioned. On the launching ground at Navy Point the frigate ships Mohawk, Superior, and other vessels were built. The dock was deemed essential to the harbor, and to its usefulness for public purposes, and was used by the United States, during and after the war, exclusively.

That the land at Storr's Harbor was purchased as a safe and con-

venient place on which to erect one of the large line-of-battle ships then about to be built for the government. That it was necessary to purchase the tract, not only because it included a safe harbor and place for building the vessel, and was a good launching ground, but because it had on it good timber of the kind wanted, and the owner of it would not sell a smaller quantity of the land.

That the said Henry Eckford gave for Navy Point 3,000 dollars, for the Hospital Ground 193 75-100 dollars, and for Storr's Harbor 3,935 33-100 dollars, and for the building of the dock he paid 4,050 dollars. Total cost, 11,179 08-100 dollars.

3 That previous to the first day of January, 1815, there were built by the United States, that is to say, by the said Henry Eckford, for them, the two large ships-of-the-line, the New Orleans and Chippewa; one on the said land called Navy Point, and one on the land at Storr's Harbor; that both of them were nearly ready for launching when the war closed.

That from the time of their erection those vessels remained on those properties respectively, and the United States were in possession thereof—the vessel at Storr's Harbor until January, 1833, when she was broken up; the vessel at Navy Point until May 17, 1845, and afterwards. That on or about the last-mentioned day, the property at Navy Point, with the Hospital Ground, was sold by the executors of the said Henry Eckford to the United States; a naval officer of the United States, in full commission, and men under him, all in the employ and pay of the government, in the meantime, being in charge thereof, and the property being, in fact, used as a navy post.

And the petitioners further show that the said Henry Eckford, in the month of November, in the year 1832, at Constantinople, in the empire of Turkey, departed this life, leaving his last will and testament; whereby, among other things, he appointed his wife, Marion Eckford, executrix, and James E. De Kay, Gabriel F. Irving, Charles P. Clinch, and Francis R. Tillou, executors thereof. That the said executrix and executors qualified as such, and received from the surrogate of the city and county of New York letters testamentary, in due form of law. That since then the said Marion Eckford, James E. De Kay, and Gabriel F. Irving, have also departed this life, leaving the petitioners, the said Charles P. Clinch and Francis R. Tillou, the sole surviving executors of the last will, &c., of the said Henry Eckford, deceased.

Upon information and belief, the petitioners further show, that on or about March 13, 1823, the said Henry Eckford received from the Navy Department rent for the said Sackett's Harbor property from the first day of January, 1815, to that date, the then Secretary of the Navy deeming it a lawful charge. Thereafter a law appropriating further funds was deemed necessary to warrant payment of other and further rent.

4 That in January, 1827, the rent of the several properties, viz., of that at Sackett's Harbor, at the rate of 290 dollars per annum, (at which rate the rent to March 13, 1823, had been paid by the government,) and of the Storr's Harbor property at the rate of

250 dollars per annum, the total rent, 540 dollars per annum, being, in fact, less than six per cent. per annum on the cost thereof, amounted to 4,160 dollars; and application was then made for its payment to the department; and because, as was said, that sum could not be paid out of the funds then at the disposal of the department, without injury to the objects for which the appropriations were made, the claim was referred to Congress.

That in the year 1828, therefore, Mr. Eckford applied by petition to Congress for a law of appropriation for payment of the arrears. The application was referred to Mr. Southard, then Secretary of the Navy. He made a report on the 8th of December of that year in favor of the application, and of an appropriation for the payment.

That thereupon the application was referred to a committee of the House of Representatives on naval affairs. That on February 17, 1829, that committee made a report unfavorable to the application, as to the Sackett's Harbor property, on the ground that Commodore Chauncey had bought it with government funds, and in trust for the United States; and as to the Storr's Harbor property, because the tract was more than the United States used. That both grounds are erroneous. The United States funds were not used in the purchase of the Sackett's Harbor property; it was not bought with those funds, and by the refusal of the officers of government to receive the property and striking the charge therefor from the accounts, he was left absolute owner. As to the Storr's Harbor property, the whole only could be purchased, not in part, and the timber of all the land was really used in building the ships. That the report recommended the purchase of the Sackett's Harbor property for the price Mr. Eckford paid and interest, and payment of so much of the Storr's Harbor property as was actually occupied.

That, in the year 1830, Mr. Eckford again petitioned Congress, and on January 20, 1831; and, the petition being referred to a commitee it reported, adopting in some measure the opinion of the pre-
5 ceding report, as to Navy Point and the Hospital Ground, and refusing to allow for building the dock, on the ground of his accounts having been settled in the ship-building operations. This ground is erroneous, for, by a reference to his accounts, it will be seen that no payments for this dock were ever made. And therewith the committee reported a bill to purchase the Sackett's Harbor property for 5,057 dollars, being the price paid therefor and interest, allowed by the laws of the State of New York from January 1st, 1823; and for the payment of a reasonable rent of so much of Storr's Harbor as the vessel thereon occupied, and the building yard thereto, for the time it had been owned by him and so occupied; and to purchase of him so much of the land at Storr's Harbor, not exceeding ten acres, as might be necessary and proper for naval purposes; and appropriating for the purchase of the Sackett's Harbor property the sum above mentioned, and for the purposes mentioned as to the Storr's Harbor, a sum not exceeding 2,500 dollars. The bill is erroneous in stating that there was a building yard or ground attached to the vessel at Storr's Harbor, for no specific portion of the land was set apart as

such, further than incidentally existed from the use of the land where she was, and exclusively occupied by the workmen and materials around her. This bill was not further acted upon.

That, upon their own knowledge, the petitioners further show, that on the 19th of March, 1834, the executors of the said Henry Eckford applied to Congress, for an act of appropriation to pay the rent then in arrear. The application was presented to the Senate, where it was referred to the Committee on Naval Affairs, who reported a law authorizing the Secretary of the Navy to pay to the legal representatives of Mr. Eckford, for the use and occupation of the lands, 540 dollars per annum, for each year they had been occupied by the United States, with legal interest from the times when the annual payments became due, deducting the sum which was paid to him in the year 1823, and directing the Secretary of the Navy to sell the vessels at Sackett's and Storr's Harbors, and to deliver possession of the lands to the executors of Mr. Eckford.

That the last-mentioned bill passed the Senate, but did not pass the House of Representatives; there the application was referred to the Secretary of the Navy.

6 That in the year 1835, a further application was made by the said executors, and the like bill as that last mentioned was reported to, and again was passed by the Senate, but was not passed by the House of Representatives.

That successive applications were afterwards made by the said executors, for a law of appropriation to pay said claim; and on January 15th, 1839, in consequence of one of these applications, a bill was reported to the Senate, to pay them, the said executors, 290 dollars per annum, from the 1st of January, 1823, for the use of the property at Sackett's Harbor, and 250 dollars per year, from the first day of January, 1815, to the first of November, 1823, for the use of the Storr's Harbor property, with legal interest on the said several annual payments, from the time when they respectively became due.

This, however, did not become a law; but on information and belief, the petitioners further show that, in the year 1842, an act was passed and approved on the 29th August, of that year, which act, as is said, was reported previously by Mr. Strange, in the House of Representatives, from the Committee on Naval Affairs, authorizing the payment of 3,783 97-100 dollars, in full for the rent of both places; up to the 1st of January, 1840, and authorizing the payment 181 62-100 dollars per annum, for the rent of Navy Point, as long as it should be retained; (see Laws United States, vol. X, page 328;) and, upon their own knowledge, they further say that, the money thereby authorized to be paid was so grossly below the amount justly due, that the act has not been acceded to or accepted by the executors or legal representatives of the said Henry Eckford.

The petitioners further show that, on or about the 29th day of May, in the year 1839, a suit was brought by the officers of the United States against the said executors, in the district court of the United States for the southern district of New York, which suit was afterwards removed into the circuit court of the United States for that

district, to recover the penalty of a bond, executed by the said Henry Eckford, in his lifetime, and others, as sureties of Samuel Swartwout;

7 that the institution of this suit caused a suspension in the efforts of the executors before Congress, to procure an appropriation for the said above-mentioned claims, during the pendency of said suit.

That the proceedings in that suit were attended with excessive difficulties, labor, and expense to the executors, in defending themselves; the suit was brought without previous notice to them; the only information, for a considerable time after its commencement, which they could obtain, being that it was brought on the bond, together with a certified copy of an account of the Treasury Department with Mr. Swartwout, of which they were allowed to have a copy; but which account was subsequently discarded for another, substituted as a revised account. That, for a time, being denied, on their several applications, access to the custom-house books, and these accounts being too general in their character to afford, without minute and further details, sufficient information for a correct understanding of them, yet, as certified, declared by the statute law to be presumptive evidence of claim, the executors, in preparing for their defence, were placed at great disadvantage. That, in that suit, among other matters, the executors plead, by way of set-off or counter claim, as by law allowed to do, their claim above mentioned against the United States.

That the said suit endured many years, the estate of Mr. Eckford, in the meantime, being held in suspense, and his children and family deprived of their patrimony; the executors being unable to pass to them the estate to which they were entitled, until the termination of the said action; and besides, were subjected to heavy expenses in the defence of it.

That two trials were had in the case, on the first of which, on a question of law, the judges before whom the trial was had, gave a certificate of disagreement, in order to carry the question to the Supreme Court of the United States, for decision. It was there argued and decided, and the cause remanded to the circuit court for the southern district of New York. (See 1 Peters United States Reports, page 250.)

That, afterwards, a second trial was had, in which evidence on both sides was produced, not only as to the merits of the claim of

8 the United States upon which the action was brought, but, also, as to the set-off or counter claim of the executors against the United States, above mentioned; and after a careful examination and consideration of the whole case by the jury empannelled for the trial, and discussion of counsel on both sides, and the charge of the court, the jury found a verdict against the United States on the claim upon which the said action was brought; and in favor of the defendant, not only as to the said claim of the said United States, but also as to the said set-off or counter claim of the said executors, and certified that a balance was due from the said United States to the said executors, of 20,545 dollars and fifty-nine cents. That the said verdict was rendered on or about the 20th day of May, 1845.

That, in truth and in fact, there was rightfully due on the last-mentioned day from the said United States to the said executors, not only the said sum so certified by the said jury, by their said verdict, but more.

That the rent charged per annum for the use of all the said properties, did not, in fact, equal six per cent. per annum, on the cost thereof. That, as the petitioners are informed and believe, the said six per cent. on the said cost, 11,179 08-100 dollars, amounts to 670 74-100 dollars, and the whole rent charged was 540 dollars, and that allowed by the verdict is only 530 dollars per annum; the said Henry Eckford and his estate having been also at the cost of the yearly taxes on the property.

That the said verdict was made up, as the undersigned have been informed and believe, as follows, that is to say:

Rent of the Storr's Harbor property, from the 1st January, 1815, to 1st January, 1833, at 280 dollars per annum	$5,040 00
That this item, instead of being allowed at 290 dollars per annum, as had been charged and previously allowed, was made 280 dollars only, (ten dollars per annum less,) and this difference must have arisen from mistake, as no objection at the trial was made to the rate charged.	
Interest on each year's rent, at six per cent., until 1st January, 1833, when the rent ceased	2,570 40
Carried forward	$7,610 40
9 Brought forward	7,610 40
Interest on the aggregate rent of 5,040 dollars, from 1st January, 1833, when the whole drew interest, to May 17, 1845, twelve years, four months, and nineteen days, at six per cent	3,743 88
Rent of Navy Point from 1st January, 1823, to 17th May, 1845, twenty-two years, four months, sixteen days, at 250 dollars per annum	5,594 43
Interest from the time each year's rent due to May 17th, 1845, at six per cent	3,589 52
Addition allowed, presumed for additional time for interest from 17th to 20th May	7 36
	20,545 59

That, thereafter, an application for a new trial was made to the court upon a case made, which, after a delay of several years, and after full argument and careful consideration, was denied; and thereupon judgment, which was given in September, 1849, was entered and docketed on the 12th day of October, 1849, to the effect that the United States take nothing by their bill, and that the surviving executors are entitled to be paid the said balance, so certified by the said jurors to be due from the United States to and in favor of the

said executors, as by reference to the judgment record in the said cause, on file in the office of the clerk of the said circuit court will appear.

The petitions further show, that in order to defend themselves in the said suit, and in obtaining necessary information and legal aid to that end, and in establishing their set-off or counter claim therein, in pleading therein, in preparing for trial and for argument on several occasions, and for various proceedings incident to the controversy in its various stages and branches, they, the executors, were obliged to employ counsel from time to time, and to employ skilful and eminent accountants to examine and analyze the accounts of the said Samuel Swartwout, and the accounts and documents and papers and facts auxiliary thereto, and were subjected to various expenses and disbursements therein.

That, after the suit had been pending for some time, and had progressed beyond the first trial, they were allowed to examine the books and documents in the custom-house, and they were there examined by one or more of such accountants.

And the executors were thereby subjected to large disbursements, and were obliged to pay other moneys for expenses, besides the above, incident and necessary in and about their defence, and in establishing their said set-off or counter claim, including a period of about ten years, during which the said suit was pending, and amounting altogether, on the first day of August, 1855, to 10,833 03-100 dollars, and lawful interest on each payment to that day, which interest, in all, amounting to 7,501 15-100 dollars, makes, together with the said principal moneys, the sum of 18,334 10-100 dollars, which sum and interest on the said principal sum of 18,833 03-100 dollars, from the said first day of August, 1855, the petitioners respectfully claim that they, in equity, are entitled to receive from the said United States, and therefore ask payment thereof.

That in the year 1852 a further application to Congress was made by the said executors for an act of appropriation for payment of the said judgment and the said expenditure, in the defence of the said suit, and in establishing said set-off or counter claim, and interest thereon, and was presented to the Senate, and referred to the Committee on Claims. That the last-mentioned committee, on the tenth day of August, 1852, reported, among other things, that the judgment of Congress, in view of the whole events of the case, had been deliberately given, and should be held conclusive and final; that the matter upon which the certificate of the jury was given was not properly before it, as submitted for their action, that the opinion of the jury that the defendants, as surety for Samuel Swartwout, were not indebted, was an end of the case so far as they had any control over it; that their verdict furnished no evidence of indebtedness on the part of the government; that it is an extra-judicial opinion of jurors, sworn to try an issue of which this formed no part; that the larger portion of the claim consists of fees paid to attorneys, and of interest upon that and other items of account, neither of which are

chargeable to the United States; and that the act passed in 1842, in accordance with the views given by Mr. Strange, in his report in 1840, provides for the payment of a liberal compensation for the use of the property of Mr. Eckford, and recommended the passage of a resolution that the executors were not entitled to the relief sought.

11 The petitioners further show that they are advised and believe that the said report of the Committee of Claims is based upon erroneous grounds; that the judgment of Congress upon the entire merits of the case has not been given, and whether given or not, is not conclusive and final against the claim, because the claim is intrinsically just and honest; that the matter upon which the certificate of the jury was given was properly before it, and was submitted properly for their action; that the opinion of the jury that the defendants, as sureties of Samuel Swartwout, were not indebted, was not an end of the case, so far as they had any control of it, in the sense meant by the last mentioned report, viz., of precluding the jury from certifying the balance due to the said executors; that their verdict did and does furnish evidence of indebtedness on the part of the government; that it is not an extra-judicial opinion of jurors sworn to try an issue of which this formed no part; but is, in fact, the lawful verdict of a jury sworn to try several issues, of which this was one; that the larger portion of the claim did not consist of fees paid to attorneys, but a smaller portion consisted of disbursements for travelling expenses, for compensation to accountants, and for counsel services; a very small part thereof being for fees to attorneys, all of which the petitioners claim that, in good conscience and equity, the United States ought to pay, with interest; that an account of the said moneys laid out and expended in and about the defence in the said suit, and in establishing the said set-off or counter claim, in detail, accompanies this petition.

The petitioners further show, that they, the said surviving executors, are now the lawful owners of the said several claims herein set forth, and the payment whereof is sought for.

The petitioners therefore pray that the said sum of 20,545 59-100 dollars, the said sum found due by the said court and jury, from the United States to the said executors, and lawful interest thereon, from the said 20th day of May, 1845, the date of the said verdict, and also, the said sum of 18,334 18-100 dollars, and lawful interest on the principal money thereof, to wit: on the said sum of 10,833 03-100 dollars thereof, from the 1st day of August, 1855, the last mentioned sum being the amount of moneys laid out and expended in and about the defence of said suit by the said executors, and in establishing the said set-off or counter claim, be allowed and paid to them; and that judgment, or such decree or order as this court may have power to grant, be entered accordingly, to the

12 end that such law or action be had therein, as shall or may be lawful and proper; and that they may have such other or further relief as shall or may be meet and proper.

F. R. TILLOU.
CHAS. P. CLINCH.

STATE OF NEW YORK, *City and County of New York, ss:*

Charles P. Clinch and Francis R. Tillou, the claimants above named, being severally duly sworn, doth depose and say, each for himself, that the facts stated in the foregoing petition are true to the best of his knowledge and belief.

F. R. TILLOU.
CHAS. P. CLINCH.

Subscribed and sworn before me, at the said city of New York, this 22d day of August, 1855.

J. B. COPPINGER,
Commissioner of Deeds.

Sworn before me, this 18th day of September, 1855, by Francis R. Tillou and Charles P. Clinch, to me personally known.

GEO. W. MORTON,
United States Commissioner, Southern District of New York, 2d Circuit

13 *Disbursements paid by the executors of Henry Eckford, in and about the defence of the suit brought by the United States against them on the bond of the deceased, for the first term of four years of Samuel Swartwout, collector, &c., with interest at seven per cent. per annum, to the 1st of August,* 1855.

Years.	Month and day.	Name.	Purpose.	Amount.	Period for calculation of interest.			Amount of interest.
					Years.	Months.	Days.	
1840	January 1	F. B. Cutting	Counsel fee	$100 00	15	7	0	$109 06
1840	April 13	Daniel Lord	Counsel fee	100 00	15	3	17	107 08
1840	December 2	Edward Curtis	Counsel fee	250 00	14	7	29	256 54
1841	February 19	J. P. Hall	Counsel fee	200 00	14	5	12	202 30
1841	April 7	B. F. Butler	Costs	36 78	14	4	25	37 02
1841	October 12	F. R. Tillou and J. E. De Kay	Expenses to and from Washington	96 86	13	9	19	93 50
1841	December 16	F. R. Tillou	Expenses to and from Washington	29 36	13	7	15	27 92
1841	December 21	J. P. Hall	Counsel fee	250 00	13	7	10	238 15
1841	December 21	Daniel Lord, jr.	Counsel fee	250 00	13	7	10	238 15
1841	December 28	Abijah Mann, jr.	Professional services and going to Washington	500 00	13	7	3	475 60
1843	January 9	Jno. A. Flemming	Accountant services	200 00	12	6	22	175 88
1843	November 3	A. Mann, jr.	For expenses	117 62	11	8	28	96 58
1843	December 28	J. P. Hall	Counsel fee	250 00	11	7	8	203 05
1843	December 25	D. Lord, jr.	Counsel fee	750 00	11	7	6	608 82
1843	December 26	Silas Wright	Counsel fee	500 00	11	7	5	405 97
1844	June 22	F. Mallaby	Expenses as a witness	37 87	11	1	9	29 44
1844	June 24	Jno. A. Flemming	Services as accountant	300 00	11	1	7	233 15
1845	May 5	F. Mallaby	Expenses as a witness	14 12	10	2	26	10 13
1845	May 24	B. F. Butler	Costs	38 79	10	2	7	27 60
1845	July 1	D. Lord	Counsel fee on trial	500 00	10	1	0	352 91
1845	July 1	J. P. Hall	Counsel fee on trial	500 00	10	1	0	352 91
1845	July 1	A. Mann, jr.	Counsel fee on trial and expenses	577 18	10	1	0	407 37
1845	July 1	F. B. Cutting	Counsel fee on trial	500 00	10	1	0	359 91
1845	July 9	F. A. Dickins	Services	300 00	10	0	22	211 30
1845	July 16	F. B. Cutting	Counsel fees, expenses, &c.	330 74	10	0	15	235 46
1845	July 16	F. B. Cutting	Costs, expenses, &c.	435 57	10	0	15	306 04
1845	December 3	Jno. A. Flemming	Accountant services	500 00	9	7	28	337 05
1846	February 27	F. R. Tillou	Expenses to and at Washington	34 76½	9	5	2	22 97
1848	February 2	F. B. Cutting	Counsel fee	350 00	7	5	27	184 02
1848	February 2	Daniel Lord, jr.	Counsel fee	350 00	7	5	27	184 02
1848	February 2	F. B. Cutting	Counsel preparing statements	150 00	7	5	27	78 85
1848	February 16	Jno. A. Flemming	Services as an accountant	100 00	7	5	13	52 16
1848	April 18	E. C. West	Services and going to Washington	50 00	7	3	13	25 50
1849	February 28	Jno. A. Flemming	Services as an accountant	250 00	6	5	3	112 90
1849	July 17	Jno. A. Flemming	Services as an accountant	250 00	6	0	14	106 20
1850	April 6	Jno. A. Flemming	Services as an accountant	1,500 00	5	3	25	558 44
1850	April 13	F. R. Tillou	Expenses to Washington, &c.	7 68	5	3	18	2 61
1850	June 26	A. E. Stillwell	Copy record	11 95	5	1	5	4 22
1850	June 26	F. B. Cutting	For balance of costs	113 75	5	1	5	40 57
				10,833 03				7,501 15

F. R. TILLOU, CHAS. P. CLINCH.

14 In the United States Court of Claims.—October term, A. D. 1864.

THE UNITED STATES
ats.
FRANCIS R. TILLOU *et al.*, executors, &c. } No.——.

And the said defendants, by John J. Weed, their solicitor, come and make answer to the petition of the claimant on file herein; and not confessing the same, or any part thereof, doth hereby most expressly deny each and every the allegations therein contained, and call for strict proof of the same.

And as to so much of said petition as sets forth and avers that the United States is indebted to said claimant in the sum of twenty thousand five hundred and forty-five dollars and fifty-nine cents, the defendants say that they are not indebted to said claimant in said sum of money, nor any part thereof.

JOHN J. WEED,
Assistant Solicitor for the United States.

15 In the Court of Claims.

F. R. TILLOU *et al.*, executors of Henry Eckford, deceased,
vs.
THE UNITED STATES.

And now, to wit, January 8th, 1866, the court, upon due consideration of the premises, do order, adjudge, and decree that the claimants, as executors of the said Henry Eckford, deceased, do have and recover from the United States the sum of twenty thousand five hundred and forty-five dollars and fifty-nine cents.

By the court.

16 United States Court of Claims.—October term, A. D. 1865.

FRANCIS R. TILLOU *et al.*, executors of Henry Eckford, deceased,
vs.
THE UNITED STATES.

To the honorable the judges of the United States Court of Claims:

The United States, by John J. Weed, assistant solicitor of said court, respectfully represents: That on the 22d day of February, A. D. 1865, said cause coming on to be heard, the claimant, to maintain the issues on his part, offered in evidence a certified copy of a judgment purporting to have been rendered against the United States in favor of the executors of said Henry Eckford, in the United States circuit court for the southern district of New York, upon an issue there tried, wherein the United States was plaintiff and the executors of said Henry Eckford were defendants, which said judgment purports to have been signed on the 12th day of October, A. D. 1849. And

the United States, by its solicitor, then and there objected to the reading of said record in evidence, and did then and there assign as grounds of objection thereto the following reasons:

1st. That said record purports to be a judgment against the United States in favor of said executors for the sum of $20,545; but these defendants say that said record shows no such judgment as entitles the plaintiffs to read it in evidence on the trial of this cause.

2d. Because said record is not a judgment, but only the finding of a jury.

3d. Because the issue upon which the suit set forth in said transcript was decided was non est factum, and the jury found that the bond upon which said suit was instituted was not the deed of Henry Eckford.

4th. Because it does not appear from said record that the claim attempted to be set-off in said suit had ever been presented to the Treasury Department for allowance, as required by the second section of the act of Congress, passed March 3, 1797.—(1 Stat. at Large, 514.)

5th. Because the claim or demand attempted to be set off in the suit against said executors was not legally admissible as a set-off in said suit.

17 6th. Because said record is, for other reasons, insufficient, imperfect, and informal.

But the said court overruled said objections, and permitted said claimant to read said record in evidence, to which said decision of said court in overruling said objections, and permitting said claimants to read said record in evidence, the said defendant by its solicitor then and there excepted. And thereupon the said cause on the part of the said claimants was submitted to the judgment and consideration of the court. And the said defendant to maintain the issues on its part offered and read in evidence—

1st. The deposition of Jason Fairbanks.

2d. The deposition of Leonard Denison.

3d. The deposition of William Lord.

4th. The deposition of Elijah Field.

5th. The deposition of Thomas Loomis.

6th. Deed from Isaac Chauncey to Henry Eckford.

7th. Deed from Henry Champion and Lemuel Storrs to Adam Brown and Henry Eckford.

8th. Deed from Henry Eckford and Adam Brown to Elisha Camp.

And thereupon the said defendant submitted the issue on its part to the judgment and consideration of the court. And afterwards, to wit, on the 8th day of January, A. D. 1866, said court found the issues tried in favor of said claimants, and rendered a judgment in their favor for the sum of twenty thousand five hundred and forty-five dollars and fifty-nine cents.

And the said defendant, by its solicitor, then and there entered in said cause a motion for a rehearing thereof, which said motion for a rehearing is in the words and figures following, to wit:

In the United States Court of Claims.—October term, 1862.

FRANCIS R. TILLOU *et al.*, executors of Henry Eckford, deceased,
vs.
THE UNITED STATES.

The defendant, by its solicitor, enters a motion herein for a rehearing of the above-entitled cause, and assigns as reasons for said motion the following, to wit:

1st. Because the court erred in admitting in evidence the transcript of the record of the United States circuit court for the southern district of New York in the case of The United States *vs.* Henry Eckford.

2d. Because the court erred in rendering judgment in favor of the claimant and against the United States.

3d. Because there was no competent evidence before the court to authorize the rendition of the judgment in which the majority of the court concurred in rendering.

JOHN J. WEED,
Assistant Solicitor for the United States.

18 And afterwards, to wit, on the 6th day of February, A. D. 1866, said court, having considered said motion, did overrule the same and render final judgment in favor of said claimants and against the said defendant for said sum of twenty thousand five hundred and forty-five dollars and fifty-nine cents, to which said decision of the court in overruling said motion and rendering final judgment in favor of the claimants, the said defendant, by its solicitor, then and there excepted.

And the said defendant assigns and shows to the court the following errors in the rulings and judgment of the court in the decision thereof, to wit:

1st. The court erred in admitting in evidence, and permitting said claimants to read the same on the trial of said cause, said certified copy of the record of the United States circuit court for the southern district of New York, in the case wherein the United States was plaintiff, and Marion Eckford, executrix, and Gabriel F. Irving, James E. DeKay, Francis R. Tillou, and Charles P. Clinch, were defendants.

2d. The court erred in rendering the judgment in which the majority of the court concurred.

3d. The court erred in overruling the defendant's motion for a rehearing, and in rendering final judgment in favor of the claimants against the defendant.

Inasmuch as in the record and proceeding aforesaid said several errors appear, the defendant prays an appeal from the judgment so as aforesaid rendered herein to the Supreme Court of the United States, and that your honors will be pleased to certify the same in conformity with the rules of said Supreme Court regulating appeals from this court to said Supreme Court.

JOHN J. WEED,
Ass't Sol'r of Court of Claims for the United States.

19 In the Court of Claims.

F. R. TILLOU *et al.*, ex'rs of Eckford, *vs.* THE UNITED STATES. } Appeal by the U. States.

The court certify that the specification of the matters decided by the Court of Claims, should be altered and modified as follows:

Statement of facts.

In June, 1839, the United States brought an action in the circuit court of the United States for the southern district of New York, on the official bond of Samuel Swartwout, as collector of the port of New York, against Henry Eckford's executors, whose testator had been one of the sureties in that bond. The action was to recover moneys which Swartwout had received as collector and had embezzled. The defendants interposed various pleas, among others, that the moneys embezzled by the collector were received after his re-appointment, and at a time when the defendant's testator was not surety.

They also pleaded a set-off, claiming a large amount due to their testator from the United States on several accounts, and especially for the occupation of real estate. The cause, after various delays, was brought to trial on the first Monday of April, 1845. It resulted in a verdict for the defendants, and the jury certified that there was due from the United States to the defendants the sum of twenty thousand five hundred and forty-five dollars and fifty-nine cents, ($20,545 59.) The defendants' counsel moved for judgment on the verdict, and the counsel of the United States for a new trial, and the cause was thereupon continued, from time to time, until the 12th day of October, 1849.

On that day the circuit entered judgment on the verdict in
20 the following words:

"It is considered by the said circuit court, before the said judges thereof, now here, that the United States of America take nothing by their said bill, and that the defendants do go thereof without day; and that the said surviving executors are entitled to be paid the said balance so certified by the jurors aforesaid, in form aforesaid, to be due from the United States of America to and in favor of the said executors as aforesaid.

"Judgment signed this 12th day of October. A. D. 1849.

"RICHARD E. STILLWELL,
"*Deputy Clerk.*"

On the hearing of the cause in the Court of Claims, the United States by their solicitor objected to the admission in evidence of the exemplification of the proceedings and judgment in the said circuit court of the United States for the following reasons:

1st. That said record purports to be a judgment against the United States in favor of said executors for the sum of $20,545; but these

defendants say that said record shows no such judgment as entitles the plaintiffs to read it in evidence on the trial of this cause.

2d. Because said record is not a judgment, but only the finding of a jury.

3d. Because the issue upon which the suit set forth in said transcript was decided was non est factum, and the jury found that the bond upon which said suit was instituted was not the deed of Henry Eckford.

4th. Because it does not appear from said record that the claim attempted to be set-off in said suit had ever been presented to the Treasury Department for allowance, as required by the second section of the act of Congress passed March 3, 1797.—(1 Stat. at Large, 514.)

5th. Because the claim or demand attempted to be set-off in the suit against said executors was not legally admissible as a set-off in said suit.

6th. Because said record is, for other reasons, insufficient, imperfect, and informal.

But the said court overruled said objections, and permitted said claimant to read said record in evidence, to which said decision of said court in overruling said objections, and permitting said claimants to read said record in evidence, the said defendant by its solicitor then and there excepted.

21 Upon these facts the Court of Claims decided—

1st. That the circuit court of the United States had jurisdiction of the subject matter of the suit, and the set-off pleaded.

2. That the finding of the jury, and the determination of the court, constituted in substance and effect a valid and binding judgment against the United States for the sum of twenty thousand five hundred and forty-five dollars and fifty-nine cents ($20,545 59.)

3. Such judgment remaining unsatisfied and unreversed, could not be impeached in this collateral suit.

22 4. That the jurisdiction of the circuit court to hear and try the case being undisputed and the set-off being founded on matters of fact, upon which issue was joined, and the same having been submitted to and found by the jury, their finding of the same was conclusive and was not subject to re-examination in any court of the United States, by virtue of the provision of the 7th article of the amendments to the Constitution of the United States.

23 In the Court of Claims.

FRANCIS R. TILLOU *et al.*, executors of Henry Eckford, deceased,
vs.
THE UNITED STATES.

I, Sam'l H. Huntington, chief clerk of the Court of Claims, do hereby certify that the foregoing is a true transcript of the pleadings in the above-entitled case, and of the judgment of the court thereon; and of the petition of the defendants for the allowance of an appeal,

with the alterations and modifications of the points decided and alleged for error as certified by the court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this 30th day of June, A. D. 1866.

[SEAL.] SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

Attest: JOS. CASEY, *Ch. J. Ct. of Cl.*

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At a Court of Claims held at the Capitol, in the city of Washington, on Thursday, the 26th day of April, A. D. 1866.

F. R. TILLOU *et al.*, surviving executors, &c., }
vs.
THE UNITED STATES. }

The above-entitled cause is submitted on petition of appeal to the Supreme Court of the United States.

At a Court of Claims held at the Capitol, in the city of Washington, on Thursday, the 21st day of June, A. D. 1866.

F. R. TILLOU *et al.*, surviving executors, &c., }
vs.
THE UNITED STATES. }

Ordered, that the appeal in the above-entitled cause be allowed, and that it be certified with such alterations and modifications of the petition for the same as are filed by the court.

A true copy of record.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this 17th day of October, A. D. 1866.

[SEAL.] SAM'L H. HUNTINGTON,
Ch. Clerk Court of Claims.

Attest:

JOS. CASEY, *Ch. J.*

Filed 24th October, 1866.